

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 193 of 1990

**Sambhu Show
-Vs-
The State of West Bengal**

For the Appellant : Mr. Pawan Kumar Gupta

For the State : Ms. Faria Hossain
Ms. Kanchan Roy

Heard on : 02.05.2024, 04.09.2024

Judgment on : 21.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against an order passed by the Learned Judge, Special Court under Essential Commodities Act, Howrah on 28.03.1990 in Special Court Case No.105 of 1988, convicting the accused appellant to suffer rigorous imprisonment for 3 months and to pay a fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for another 3 months.
2. The prosecution case precisely stated on 24.05.1988 at about 18 hours the D.E.B. police officials visited the grocery shop of Gopal Show situated at 168 Girish Ghosh Road, Howrah and found one person running the shop. Kerosene oil and rapeseed oil were found inside the said shop. In terms of provisions of the Essential Commodities Act, a notice was served on the said

person being Sambhu Show but in spite of serving of the said notice he could not produce any licence and/or any authority in respect of kerosene oil and rapeseed. On physical verification the said officials found 51 kg of rapeseed oil, 3 tins each containing 15 kgs, labeled with S.T.O. brand and 1 open tin containing 6 kgs. of rapeseed oil. They also found 190 litres of kerosene oil contained in 7 tins, 2 small drums, one 10 litres and another 35 litres in a drum. That apart measuring pots were also found. The D.E.B. officials seized the aforesaid articles and a seizure list was prepared to that effect. The accused Sambhu was arrested and taken to Bally Police Station where on the basis of a complaint of Sri. S. K. Chakraborty (PW-2) the Bally Police Station case No.18 dated 24.05.1988 was started. Another accused Gopal Shaw was also charged along with the present appellant.

3. The prosecution examined 5 witnesses in support of their contentions. The defence was a denial of the charges.
4. The accused persons faced trial for violation paragraph 11(2) of the West Bengal Kerosene Control Order 1968 and paragraph 3(1) and (2) of the West Bengal Imported Vegetable Oil (Prohibition of Unauthorised Sale) Order, 1984 so as to be liable under Section 7(1)(a)(ii) of the Essential Commodities Act.
5. The Learned Trial Judge acquitted the accused Gopal Show but convicted the appellant Sambhu Show to suffer rigorous imprisonment for 3 months and to pay a fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for another 3 months for violation of paragraph 11(2) of the West Bengal Kerosene Oil Control Order, 1968 and the charge for violation of paragraph

3(1) and (2) of the West Bengal Imported Vegetable Oil (Prohibition of Unauthorised Sale) Order, 1984 fell on merit.

6. The Learned Judge misconceived the law in finding the accused/appellant guilty for violation of the provisions of paragraph 11(2) of the West Bengal Kerosene Oil Control Order, 1968 inasmuch as it was required to prove that the seized oil was kerosene oil and no authority and/or valid documents was produced by the accused person. The prosecution miserably failed to prove that the seized alleged kerosene oil was actually kerosene oil.

7. The Learned Advocate representing the appellant submitted as follows:-

- i. Not even a single disinterested witness had been examined in support of the prosecution case. Moreover, PW-3 Baidyanath Ganguly categorically stated that there were customers in the said shop and the articles were seized in their presence. None of such customers were produced before Court.
- ii. There was no evidence on record to show 500 ml. sample of kerosene oil had been taken by the complainant S. K. Chakraborty (PW-2) from the seized kerosene oil and sent to the expert. The expert reports revealed a sample of 200 ml. had been forwarded in a sealed parcel.

8. The Learned Advocate representing the State submitted that in view of the seizure list, report of the expert as well as the oral evidence of the prosecution evidence, the Learned Trial Court rightly convicted the appellant.

9. The oral and documentary evidence on record had been corroborative in nature. The seizure of unaccounted kerosene oil and rapeseed oil was proved through preparation of seizure list which were marked exhibits. The expert opinion identified kerosene oil to have been seized from the grocery shop. The co-accused Gopal Show who had been the owner of the grocery shop was acquitted however his brother was convicted who without a trade licence was operating the said shop.
10. In the decision of ***Tarak Nath Keshari Vs. State of West Bengal***¹, the Hon'ble Apex Court held as follows:-

“7. Heard learned counsel for the parties and perused the paper book. The fact that inspection of the shop of the appellant was carried out on 20.8.1985, hence the incident had taken place more than 37 years back. As was pointed out at the time of hearing, the appellant throughout remained on bail. Section 7(1)(a)(ii) of the EC Act under which the appellant has been convicted, provides as under:—

“7. Penalties - (1) If any person contravenes any order made under Section 3,-

(a) he shall be punishable,-

(i)

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;”

¹2023 SCC OnLine SC 605

8. *A perusal of the aforesaid Section shows that the Court may, for adequate and special reasons, impose punishment less than the minimum prescribed in the Section. However, the fact remains that the offence in the case in hand was committed on 20.8.1985 and in terms of the Essential Commodities (Special Provisions) Amendment Act, 1981, the proviso was not in force on that date.*

9. *As far as the case of the appellant on merits is concerned, we do not find that any case is made out for interference in the concurrent findings of the facts recorded by all the courts below. It was found that the stock of mustard oil and vegetable oil found at the shop of the appellant was more than the permissible limit, hence, this was violative of para 3(1) of the West Bengal Pulses, Edible Oil (Dealers Licensing) Order, 1978.*

10. *However, still we find that a case is made out for grant of benefit of probation to the appellant for the reason that the offence was committed more than 37 years back and it was not pointed out at the time of hearing that the appellant was involved in any other offence. Before all the courts below, the appellant remained on bail. While entertaining his appeal, even this Court had granted him exemption from surrendering. Section 4 of the Probation of Offenders Act, 1958 has a non obstante clause. The same is extracted below:*

“4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during

such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under subsection (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under subsection (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

11. *Even if there is minimum sentence provided in Section 7 of the EC Act, in our opinion, the appellant is entitled to the benefit of probation, the EC*

Act, being of the year 1955 and the Probation of Offenders Act, 1958 being later. Even if minimum sentence is provided in the EC Act, 1955 the same will not be a hurdle for invoking the applicability of provisions of the Probation of Offenders Act, 1958. Reference can be made to a judgment of this Court in Lakhvir Singh v. The State of Punjab.”

11. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1988. The appellant to be taken into custody to serve out the sentence would not be expedient in the interest of justice after a lapse of nearly 37 years.
12. The appellant is directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond of Rs.5,000/- to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, failing of which he can be called upon to serve the sentence. Fine to be paid of Rs.5,000/- within 06 (six) months from the date of this order failing which he shall be called to serve out the sentence.
13. Accordingly, the instant criminal appeal being CRA 193 of 1990 stands disposed of.
14. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
15. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)